

# ***OFFICE OF INSPECTOR GENERAL***

**FRAUD, WASTE, AND ABUSE REGARDING  
COLLEGE TUITION REIMBURSEMENTS IN  
DIVISION OF FLEET MANAGEMENT SERVICES**

**REPORT OF INVESTIGATION**

**MARCH 1999**





OFFICE OF INSPECTOR GENERAL

**Norman D. Butts**  
*Inspector General*

TO THE HONORABLE COUNTY COUNCIL AND COUNTY EXECUTIVE FOR  
MONTGOMERY COUNTY, MARYLAND:

We have conducted an investigation into unauthorized college tuition reimbursement payments in the Division of Fleet Management Services to address citizen complaints. Our investigation was conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States and Quality Standards for Investigations issued by the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency. Those standards require that we plan and perform the investigation to provide a reasonable basis for our findings and conclusions. Accordingly, we performed such procedures as we considered necessary in the circumstances.

The purpose of our investigation was to assess whether the Division of Fleet Management Services acted properly in using County funds to establish a program to reimburse several employees thousands of dollars for college tuition and whether the reimbursements were made in a manner consistent with County policies and regulations.

This report is the result of our investigation of the issue noted above and is intended for the information of the County Council, the County Executive, and management of the Division of Fleet Management Services and the Department of Public Works and Transportation. This restriction is not intended to limit distribution of this report, which upon delivery to the County Council and County Executive is a matter of public record.

*Office of Inspector General*

June 8, 1999

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**LIST OF ABBREVIATIONS**

AP 4-6	Administrative Procedure 4-6
AP 4-18	Administrative Procedure 4-18
ETAP	Employee Tuition Assistance Program
FMS	Fleet Management Services
JITAP	Job Improvement Tuition Assistance Program
OHR	Office of Human Resources
OIG	Office of Inspector General
PBU	Police Bargaining Unit Tuition Assistance Program

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**INTRODUCTION**

Purpose and Scope of Investigation

This investigation was performed to address several citizen complaints. It was conducted in accordance with generally accepted governmental auditing and investigative standards. The purpose was to assess whether the Division of Fleet Management Services (hereinafter "Fleet Management Services" or "FMS") acted properly in using County funds to reimburse three management-level employees for college tuition payments and whether the reimbursements were made in a manner consistent with County policies and regulations.

The Complaints

The complaints received by the Office of Inspector General alleged fraud, waste, and abuse involving the expenditure of County funds by Fleet Management Services. Specific information was provided pertaining to unauthorized college tuition reimbursements to three management-level employees. (In a previous Office of Inspector General report issued on April 16, 1999, we reported on unauthorized procurement and misuse of a corporate credit card by FMS.)

Results in Brief

Fleet Management Services reimbursed three FMS management-level employees a total of \$32,991 for college tuition payments. Because the County received nothing in return for its payments that it did not already have, the reimbursements were a waste of County funds amounting to a giveaway. The unauthorized FMS tuition assistance "program" lacks any significant management controls. We found a general lack of documentation supporting and justifying the expenditures. There were no written contracts with any of the three employees; no limitations placed on the amounts to be paid nor any limitations on the number or type of courses that could be taken. One employee received reimbursement for expenses not paid by failing to pass along to the County discounts the employee had received from the university. A summary of findings, recommendations, and agency responses is noted below.

## INTRODUCTION (Continued)

<i>Finding &amp; Recommendation</i>	<i>Agency Response</i>
1. <u>Questioned Costs (\$32,991) – Waste Of County Funds For College Tuition Reimbursements.</u> Stop reimbursements; seek recovery of funds; consider administrative and disciplinary actions.	<b><i>Do Not Concur</i></b>
2. <u>Possible Fraud – County Employee Received \$1,900 In Reimbursements To Which the Employee Was Not Entitled.</u> Matter referred to State’s Attorney.	<b><i>No Response Required</i></b>
3. <u>FMS Tuition Reimbursements May Violate County Charter.</u> Matter referred to County Attorney (See: <b>Appendix E.</b> )	<b><i>No Response Required</i></b>
4. <u>Violation Of Administrative Procedure On Employee Development.</u> Either enforce provisions or rescind procedure.	<b><i>Concur</i></b>
5. <u>Lack Of Separation Of Duties.</u> Review policies to find a cost effective management control.	<b><i>Concur</i></b>

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**BACKGROUND**

Montgomery County has a very large investment in its employees, its human infrastructure. The proposed FY 2000 County budget projects personnel expenditures for salaries and benefits to be \$482,500,000 or approximately fifty (50) percent of all County government expenditures.

Employee Development

County employees constitute a highly motivated, well-educated, and justly-compensated workforce. Reflecting the community at large, many County employees have obtained college degrees, including advanced degrees, from institutions of higher education in the Washington metropolitan area as well as from other colleges and universities located throughout the country. Like the community at large, most County employees paid their own college expenses or received, at most, minimal assistance from County government for those expenses.

Employee development policies, responsibilities, and procedures are set forth in Administrative Procedure 4-6 (hereinafter "AP 4-6") approved by the County's chief administrative officer on October 10, 1973 (see: **Appendix B**). According to AP 4-6, employee development is a shared responsibility. The Training and Performance Management Team, formerly the Employee Development Division, of the Office of Human Resources (hereinafter "OHR"), is charged with providing leadership in the field of employee development. Department or division heads have the responsibility to determine the training needs of their personnel at all levels and are required to prepare a departmental training plan. Participation in employee development programs is required to be equally open without discrimination to all persons who meet prerequisites. Training is to be utilized to promote the County's equal employment opportunity and affirmative action programs.

The County has traditionally supported several types of on-going programs reasonably devoted to employee development. For example, some County departments expend limited funds from time to time for employees to attend day-long training seminars or short courses on topics of immediate concern to the department and its operations. Often these occasions provide employees the opportunity to interact with peers from other organizations while

## BACKGROUND (Continued)

staying abreast of best practices and the “nuts and bolts” necessary and desirable to further the efficient and effective management of departmental operations. Additionally, some departments, from time to time, have reimbursed employees attending local colleges and universities for semester-long courses in specialty areas such as telecommunications systems or computer science where rapidly changing technology makes such action critical. Departments may also pay to have employees maintain certification in certain key skill areas such as accounting, medicine, law, or diesel mechanics.

### Employee Tuition Assistance Program

According to Human Resources Topics: Tuition Assistance (June 1997) published by the County’s Office of Human Resources, the Employee Tuition Assistance Program (hereinafter “ETAP”) is one of only three tuition assistance programs available to County employees. The other two programs are the Job Improvement Tuition Assistance Program (hereinafter “JITAP”) and the Police Bargaining Unit Tuition Assistance Program (hereinafter “PBU”). JITAP is available for employees taking individual courses to improve or maintain skills required in their current job. Course work must be directly related to the employee’s position. The PBU program is available to police officers who are seeking a degree or to improve skills required in their current jobs.

Policies and procedures regarding ETAP are set forth in Administrative Procedure 4-18 approved by the County’s chief administrative officer on May 1, 1980 (see: **Appendix C**). The program exists to assist County employees with educational expenses in order to help them perform their current jobs more effectively and to prepare them for higher level responsibilities. Under ETAP the County will pay 100% of authorized educational expenses for a County employee up to a maximum of \$730 annually. Using ETAP funds an employee may pursue completion of credit or non-credit courses, a certificate, an associate’s degree, a baccalaureate degree, or a graduate degree in a field directly related to the employee’s work, normal career progression, or which will prepare the employee for a career change within County government. During the past four fiscal years ETAP has served 2,495 County employees by reimbursing \$878,557 in college tuition costs, an average of \$352 per employee per year. (**Table 1**).

**TABLE 1**

<b>EMPLOYEE TUITION ASSISTANCE PROGRAM (FY 1996 – FY 1999)</b>					
	<b>FY96</b>	<b>FY97</b>	<b>FY98</b>	<b>FY99</b>	<b>TOTAL</b>
Expenditures	\$174,480	\$186,077	\$254,680	\$263,320	\$878,557
Employees Served	520	640	715	620	2,495
Expenditures/Employee	\$ 336	\$ 291	\$ 356	\$ 425	\$ 352 <sup>1</sup>
Source: OIG analysis of OHR data.					

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<sup>1</sup> Four-Year Average.



## BACKGROUND (Continued)

Participation in ETAP obligates a County employee to achieve passing grades in all courses funded by ETAP and to remain employed with County government for one year after using ETAP funds or repay some or all of the ETAP funds received. ETAP requires the submission of a written application form and certain approvals from the employee applicant's immediate supervisor, division chief or department training coordinator, and the Office of Human Resources.

### FMS Tuition Reimbursements

During the period May 14, 1996 to February 23, 1999, the Division of Fleet Management Services reimbursed three management-level employees \$32,991 for college tuition costs each incurred over and above ETAP reimbursements of \$3,960. Unlike the ETAP program, the FMS tuition reimbursements scheme did not contain any formal written contract outlining the duties and responsibilities of the County and the employees.

From our discussions with the FMS chief, the three employees, and others we were able to discover how the ad hoc FMS reimbursement scheme evolved. One by one the three employees went to the chief and asked for reimbursement for their college tuition and the chief readily agreed to do so. No written documents exist to support these conversations, nothing was asked of the employees in return for the reimbursements, no limits were placed on the amounts to be reimbursed. Neither the County's Office of Human Resources nor anyone in the director's office at the Department of Public Works and Transportation knew about the existence of the FMS payments providing reimbursements to employees for college tuition costs. During the past four years FMS reimbursed the three employees an average of \$4,713 per employee per year. (Table 2).

**TABLE 2**

<b>FMS COLLEGE TUITION REIMBURSEMENTS (FY 1996 – FY 1999)</b>					
<b>Employee</b>	<b>FY96</b>	<b>FY97</b>	<b>FY98</b>	<b>FY99</b>	<b>TOTAL</b>
A	\$ 1,810	\$ 9,100	\$ 5,818	\$ 4,778	\$21,506
B	-0-	-0-	-0-	3,808	\$ 3,808
C	-0-	-0-	2,154	5,523	\$ 7,677
Expenditures	\$ 1,810	\$ 9,100	\$ 7,972	\$ 14,109	\$32,991
Employees Served	1	1	2	3	7 <sup>2</sup>
Expenditure/Employee	\$ 1,810	\$ 9,100	\$ 3,986	\$ 4,703	\$ 4,713 <sup>3</sup>
Source: OIG analysis of FMS data.					

<sup>2</sup> Three employees "served" a total of seven times.

<sup>3</sup> Four-Year Average.

## **BACKGROUND (Continued)**

In further describing the FMS reimbursements we will refer to the three management-level employees simply as “A,” “B,” and “C.”

**A**, employed by Montgomery County for more than twenty years, started and completed an undergraduate program and received a degree from a mid-western university offering classes at several locations in the metropolitan area. **A** paid the university a total of \$11,721 for the undergraduate degree and was reimbursed \$12,740 by FMS. The difference between what **A** paid the university and what FMS reimbursed is an eight (8) percent discount **A** received. **A** is currently enrolled in a graduate program at the same university. **A**’s graduate courses have cost \$1,267 each (with discount), require three hours of classroom attendance per week, and last for approximately four weeks. **A** has been reimbursed \$1,377 for each class. **A** told us there is nothing in writing regarding the arrangement with FMS. **A** believes the tuition reimbursement arrangement is appropriate because fleet management services pays the cost for its mechanics to obtain “ASE certification.”

**B** has been employed by the County since 1995. **B** was hired as an automotive mechanic and has been promoted several times. **B** is pursuing an undergraduate degree in business management and has been reimbursed a total of \$3,808 by FMS. **B** attends a local college. **B**’s college offers classes in six-week modules and gives credit for class work and work-related projects. **B** did not sign any type of contract or agreement with FMS in exchange for FMS funding the degree program and there were no limits placed on the amount of FMS funding that would be available to **B**.

**C** has been employed by the County since 1997. **C** is pursuing a master’s degree at a state university. **C**’s immediate supervisor referred **C** to the FMS chief. **C** told us the chief was supportive of **C**’s educational plans, did not require any signed agreement, and did not place any limits on the amount of FMS funding that would be provided. **C** described the arrangement with FMS as a “gentlemen’s agreement.” **C** has received \$7,677 to date from FMS. **C** expressed an interest in pursuing a doctorate.

## **Conclusion**

ETAP has been a long-standing, successful program that benefits all non-police employees. The County clearly intended ETAP to be *the* mechanism through which those employees receive authorized subsidies for pursuing college degree programs. While Montgomery County desires a highly educated workforce, it also recognizes that it can not afford to pay each employee the full cost of a college education. Thus County government, through ETAP, has imposed a \$730 per year limit on the amount of funding available to reimburse employees for college tuition costs. The total amount of ETAP funding is further limited by the appropriations process. ETAP should continue to be the only source for such funding unless elected and appointed policy-makers specifically determine otherwise. Based on the average FMS to ETAP ratio, in order to fund ETAP at the same generous level as the FMS reimbursements, the County would have to spend an additional \$2.6 million annually. **(Table 3).**

## BACKGROUND (Continued)

**TABLE 3**

<b>COMPARISON OF AVERAGE ETAP AND FMS COLLEGE TUITION REIMBURSEMENTS (FY 1996 – FY 1999)</b>					
	<b>FY96</b>	<b>FY97</b>	<b>FY98</b>	<b>FY99</b>	<b>AVERAGE</b>
ETAP – Average Payment	\$ 336	\$ 291	\$ 356	\$ 425	\$ 352
FMS – Average Payment	\$ 1,810	\$ 9,100	\$ 3,986	\$ 4,703	\$ 4,713
Ratio - FMS to ETAP	5:1	31:1	11:1	11:1	13:1
Source: OIG Analysis of FMS and OHR data.					

The Office of Inspector General believes it is sound management practice to provide County employees opportunities to improve their skills and abilities in today's highly competitive business and government environments. We strongly support employee training and development through the County's authorized and established Employee Tuition Assistance Program. ETAP provides equitable access to limited educational funds and prudent stewardship of taxpayer dollars. In contrast, it is fiscally unsound and inequitable to allow middle managers, such as the FMS chief, without adequate oversight or authorization, to unilaterally initiate a separate and more generous ad hoc college tuition reimbursement scheme providing unlimited funds to a limited number of employees.

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**FINDINGS & RECOMMENDATIONS**

***Finding No. 1: Questioned Costs (\$32,991) – Waste of County Funds For College Tuition Reimbursements***

We found the FMS chief wasted County funds when he authorized reimbursements in the amount of \$32,991 to three FMS management-level employees for their college tuition expenses. From May 14, 1996 to February 23, 1999, the FMS chief approved twenty-eight (28) direct voucher reimbursements for undergraduate and graduate school tuition payments to the three FMS employees as follows:

	<i>Payments</i>	<i>Amount</i>
• FMS employee A	22	\$21,506
• FMS employee B	2	\$ 3,808
• FMS employee C	4	\$ 7,677

None of the three employees received the tuition reimbursement payments subject to any written restrictions or conditions. In addition, five (5) additional reimbursements from the County's only approved program, the Employee Tuition Assistance Program, totaled \$3,960 to the three employees during the same period.

ETAP, the County's established tuition assistance program, has been in existence for some years. That program was designed specifically to assist employees with educational expenses. As noted above, ETAP pays County employees (contingent upon the availability of funds) up to the maximum amount established each fiscal year (currently \$730). The program was established by administrative procedure, is administered by OHR, and has written guidelines and management controls in place. ETAP has established employee eligibility criteria; imposes additional terms and conditions of employment on its recipients; and disburses available funding uniformly to all participating County employees. It seems clear to us the County intended ETAP to be the sole source of financial assistance to County employees pursuing college degree programs.

Any tuition assistance program in addition to ETAP, to be valid, should be well-planned, carefully implemented, and contain the following minimum characteristics:

## **FINDINGS & RECOMMENDATIONS (Continued)**

- (1) it should be in writing;
- (2) it should fully describe the duties and responsibilities of program participants;
- (3) it should clearly define both annual and total program maximum reimbursement amounts;
- (4) it should accurately describe the type and level of courses for which reimbursement will be allowed;
- (5) it should provide for reimbursement only in those academic or technical skill areas where the County can not adequately recruit locally;
- (6) it should be made widely known and be equally open without discrimination to all qualified employees who meet prerequisites; and
- (7) it should be expressly approved by appropriate County officials at the department level or higher.

The FMS tuition reimbursement payments scheme contained none of those characteristics. Additionally, the courses taken by the three FMS employees were not essential to their job performance and were not unique or specialized training that resulted in a direct work-related benefit to the County.

An abuse of discretion by the FMS chief caused this waste. The condition was made worse by a lack of adequate management controls, supervision, and oversight by the CAO and department director, which allowed this giveaway of County funds to proceed unnoticed and unchallenged for almost three (3) years.

The FMS college tuition reimbursements were unnecessary, unreasonable, and a waste of County funds for several important reasons. FMS violated the intent and spirit of the County's Employee Tuition Assistance Program by providing thousands of dollars of assistance to the three selected management-level employees at reimbursement levels far exceeding the modest limits set by the established program. The FMS payments violated several of the County Executive's "Vision and Guiding Principles." The payments failed to ensure high value for tax dollars. The FMS scheme failed to recognize the County's equal employment, affirmative action, and diversity goals because it was not open to all employees. The payments demonstrate a complete lack of any serious commitment to stewardship and accountability regarding public resources.

Reimbursements to the three FMS employees for tuition expenses are "questioned costs." Questioned costs are costs that are questioned by this office because of an alleged violation of a provision of law, regulation, contract, grant, cooperative agreement, or document governing the expenditure of funds; a finding that, at the time of the audit or investigation, such costs were not supported by adequate documentation; or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

## **FINDINGS & RECOMMENDATIONS (Continued)**

### **Recommendation:**

We recommend the County administration take the following actions:

- immediately stop all FMS college tuition reimbursements;
- promptly seek recovery of the misspent funds with interest; and
- consider appropriate administrative actions, including disciplinary action, against those officials and employees responsible for the waste of County funds.

### **Agency Response:**

*We do not concur, although we agree that we can impose tighter administrative controls.*

*Montgomery County has a rich history of providing educational and training opportunities for its employees. This tradition comports with the county's emphasis in its merit system of retaining a highly competent and professional workforce. Upon reviewing the information provided us by the IG, we have identified a number of different modifications in our program that will better assure proper accounting for these reimbursements and to assure equity in these programs. Nevertheless, FMS disagrees that the information provided in this report ought to be extrapolated to suggest that we eliminate all similar employee educational programs, that monies spent to train and educate our workforce are misspent, or that a person who authorizes an employee to attend educational programs has wasted county funds and should be discharged. Our merit system has not generally been used to discharge employees for first time errors of judgment that do not involve improper and illegal motives and actions.<sup>1</sup> In short, we continue to believe that providing educational opportunities to our employees is the responsible approach to good management in today's business environment. We can carry out this mission better by developing protocols for determining how to provide these opportunities; e.g. based upon the needs of the employee and the needs of the county. These protocols can and will identify the employee's goals, both immediate and career, the agency's goals, both for the employee and for the long and short range relationship to available funding, competing workforce demands and retention. While these protocols have been missing in the past, the suggestion that developing an educated workforce misspends county money completely misses the mark.*

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<sup>1</sup>In this regard, an allegation has been made that an employee used false pretenses or fraud to obtain reimbursement for a portion of the tuition payment. If this allegation is proved true, discharge is an appropriate remedy. On the other hand, if the employee made a mistake and repays the money, discharge is not the usual sanction for this type of mistake.

## **FINDINGS & RECOMMENDATIONS (Continued)**

### **OIG Rebuttal:**

**FMS has failed to respond appropriately to the finding. The agency response, “We do not concur, although we agree that we can impose tighter administrative controls,” contains vague generalities about “a number of different modifications in our program that will better assure proper accounting for these reimbursements and to assure equity in these programs.” FMS gave three management-level employees \$32,991 without any strings (“administrative controls”) attached. We expected a response that would address our finding with a specific corrective action plan.**

### **Finding No 2: Possible Fraud – County Employee Received \$1,900 In Reimbursements To Which The Employee Was Not Entitled**

We found employee A pre-paid the university in full the cost of tuition and received a discount. Then the employee submitted requests to the County for reimbursement, reflecting the undiscounted cost of the tuition. The County paid employee A \$1,900 more than the employee was entitled to receive.

Employee A holds a position of trust and responsibility in FMS. County managers and employees are expected to have personal and professional integrity and are expected to maintain a level of competence that allows them to accomplish their assigned duties and understand the importance of developing and implementing good management controls.

### **Recommendation:**

We have no recommendation at this time. The matter has been referred to the State’s Attorney for review.

### **Agency Response:**

*No response required.*

### **Finding No 3: FMS Tuition Reimbursements May Violate The County Charter**

We found \$32,991 in tuition reimbursements to the three FMS employees amounted to unauthorized gifts of County funds. Such gifts of County funds to County employees may violate the County Charter. The reimbursements were gifts because the employees did not have to do anything beyond what they were already doing in order to receive the money. The employees simply asked for the money and the FMS chief gave it to them, no strings attached.

## **FINDINGS & RECOMMENDATIONS (Continued)**

Section 407 prohibits additional compensation for County employees (see: **Appendix D**). That provision states, “No member of the Council and no officer or employee of the County whose salary is fixed, in whole or in part, by this Charter, the laws of the County, or its personnel regulations, shall be entitled, directly or indirectly, to any other salary, expenses, or compensation from the County for performance public duties except expenses for travel and subsistence incident to the performance of official duties as prescribed by law.”

The FMS college tuition reimbursements are neither travel nor subsistence incident to the performance of official duties as prescribed by law. The FMS tuition reimbursements are nowhere prescribed by law. The FMS chief had no right to give away County funds. The reimbursements may be illegal under the County Charter.

### **Recommendation:**

We have no recommendation at this time. The matter has been referred to the County Attorney for review and comment.

### **Agency Response:**

*No response required (see: **Appendix E**).*

### **Finding No 4: Violation Of Administrative Procedure On Employee Development**

We found the FMS chief violated Administrative Procedure No. 4-6 entitled, “Employee Development” when he authorized reimbursement of college tuition payments for three FMS employees. Section 3.3(A) of AP No. 4-6 provides that, “It shall be the responsibility of department heads, division heads and supervisors: to determine the training needs of departmental personnel at all levels in the preparation of a departmental training plan.” Department or agency heads are also supposed to appoint a Training Advisory Committee (or Coordinator) to identify training needs and to encourage and coordinate training for the department or agency. The Department or agency head is further required to submit a report to OHR by September 1 of each year outlining training programs which took place in the preceding fiscal year (§5.0).

The FMS chief did not prepare a training plan, neither did he submit an annual training report to OHR outlining training programs for the preceding year as required by Administrative Procedure 4-6.

No one, including FMS employees and DPW&T supervisors, knew specifically how or why the FMS chief was spending County funds for employee training or other tuition assistance.



## **FINDINGS AND RECOMMENDATIONS (Continued)**

### **Recommendation:**

We recommend the County administration either enforce the provisions of Administrative Procedure 4-6 or formally rescind the procedure.

### **Agency Response:**

*We concur.*

*The Office of Human Resources is in the process of reviewing and updating the Personnel Regulations, as well as the Administrative Procedures. The Administrative Procedures governing Employee Tuition Assistance and Employee Development are scheduled to be reviewed and converted to Executive Regulations as part of this process.*

### **Finding No 5: Lack Of Separation Of Duties**

We found that on at least one occasion one of the three management-level employees who received reimbursement for college tuition approved the employee's own direct voucher payment in ADPICS, the County's financial accounting system. The amount of the payment was \$780.

Specific management control standards call for key duties and responsibilities in authorizing, processing, recording, and reviewing transactions to be separated among individuals. Additionally, qualified and continuous supervision must be provided to ensure that management control objectives are achieved. Management and employees must maintain and demonstrate a positive and supportive attitude toward management controls at all times.

There is the appearance of impropriety when a County employee approves his or her own direct voucher payment for reimbursement.

### **Recommendation:**

We recommend the County administration review policies and procedures to determine a cost effective management control to deal appropriately with cases where County employees can approve direct voucher payments to themselves.

### **Agency Response:**

*We concur with the recommendation.*

*Of the processed vouchers identified in the report, all had been pre-approved by the Division Chief prior to electronic processing and approval through the ADPICS system.*

## **FINDINGS & RECOMMENDATIONS (Continued)**

*The payment of \$1377 cited in the finding of the report was not approved by the recipient, but instead, by another employee delegated authority to do so during the absence of the Division Chief. The recipient electronically approved one payment of \$780 after the pre-approval by the Division Chief. This has not been duplicated since.*

*In consultation with the Department of Finance, we present the following. The FAMIS/ADPICS systems are not capable, in an automated way, of preventing those employees with approval security in ADPICS to approve payments to themselves (e.g. there is no direct internal control link between approver security profiles and the vendor table). Based on a review of the applicable Administrative Procedure (AP) and various policy and procedure documentation issued to users since the on-line financial systems were implemented in 1995, the Department of Finance has determined that specific guidance in this area was not issued to departments.*

*The Department of Finance will therefore issue guidance to users stating that ADPICS approvers should not electronically approve payments to themselves, even if the payment was manually approved by a higher-level official. The exception to this situation would be in the case of small department/offices, with limited staff, where there may be only one authorized approver. Please note, that in this case, two employees are involved in the payment process, for segregation of duties purposes, since there is a separate authorized preparer in the system.*

*Please note that an existing management control does exist in the form of the post-payment audit process conducted by Accounts Payable staff of the Department of Finance. During such audits, if situations are observed where approvers electronically authorize payments to themselves, Accounts Payable staff would recommend such practices be discontinued. Further, such audits will be copied to the applicable department director.*

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**OTHER ISSUES AND CONCERNS**

In this section we present an issue reviewed during our investigation which we did not develop as a formal finding. While not fully developed, this issue is not without significance. The County administration may consider it worthy of study or further action.

Employer and Employee Income Tax Liability.

During our investigation of FMS tuition reimbursements we noticed potential problems and inconsistencies with respect to County reporting of additional compensation to employees. Issues regarding the tax consequences of educational benefits are complex and change frequently. The appropriate County officials may wish to review the issue more thoroughly or consider retaining expert advice on the subject. County employees receiving educational benefits may also wish to consult with their tax advisors.

## **APPENDICES**



## APPENDIX A

Douglas M. Duncan  
County Executive

### DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

Robert C. Merryman  
Acting Director

#### MEMORANDUM

May 24, 1999

TO: Norman Butts  
Inspector General

FROM: Robert C. Merryman, Acting Director  
Department of Public Works & Transportation

SUBJECT: Draft Report - FMS College Tuition Reimbursement

Thank you for the opportunity to respond to the May 11th Draft Report entitled Fraud, Waste, and Abuse Regarding College Tuition Reimbursements in the Division of Fleet Management Services.

As stated in our responses to the findings and recommendations regarding the need to modify our program to assure proper accounting for these reimbursements and assure equity in the programs, we will develop procedures that will identify the employee's goals, both immediate and career, the agency's goals, both for the employee and for the long and short range plans of the agency, and the relative benefit of the educational program to the County in relationship to available funding, competing workforce demands and retention. The Office of Human Resources is in the process of reviewing and updating the Personnel Regulations, as well as the Administrative Procedures. The Administrative Procedures governing Employee Tuition Assistance and Employee Development are scheduled to be reviewed and converted to Executive Regulations as part of this process. While the Department respects the IG's function, the Department also believes that the suggestion that employee training at the collegiate level be abandoned is counter to the historical merit system goal that we retain a highly competent and professional workforce. Rather, the Department, like many of the most successful businesses throughout the United States, responded that it could better carry out its mission by developing protocols that included an analysis of issues such as employee development in the context of County goals and agency mission. Developing and managing a competent and professional workforce requires more thought and analysis than simply abandoning an employee development tool.

Office of the Director

Draft Report - FMS College Tuition Reimbursements  
May 24, 1999  
Page 2

In reference to the "Other Issues and Concerns" section of the report, the Department of Finance concurs with the recommendation that the County review the issue more thoroughly. The Department of Finance is coordinating with the County Attorney's Office to finalize research regarding the taxability and reportability of such payments based on applicable IRS regulations.

For the future, the Department of Finance will coordinate with the Office of Human Resources and the County Attorney's Office to determine whether clarification of existing policy is required, and if applicable, to improve our methodology for determining and reporting the taxability of such reimbursements.

Finally, the last paragraph of the "Agency Response" for Finding #1 can be deleted. As discussed with you by phone, this Draft Report corrected this issue and we are satisfied with the correction.

This concludes our response to the aforementioned draft report and no exit conference will be necessary.

RCM/JEB/jb



# ADMINISTRATIVE PROCEDURE

MONTGOMERY COUNTY, MARYLAND

TITLE

EMPLOYEE DEVELOPMENT

NO.

4 - 6

PAGE OF

1 3

DATE

10/17/73

CAO APPROVAL

WMM

## PURPOSE

- 1.0 To set forth policies, responsibilities and procedures for employee development in the County service.

## POLICIES

- 2.0 It is the policy of the County government to promote maximum effectiveness in conducting its operations by providing appropriate training for employees, supervisors and administrators at all levels of the organization.
- 2.1 Training activities shall be conducted according to priorities based on expected degree of contribution to the effectiveness and efficiency of the County government.
- 2.2 Employee development activities that are closely work-related shall be scheduled during regular work hours, insofar as workload permits. Where the expected benefit to the County is less direct, a training activity may be scheduled fully or partly outside of work hours.
- 2.3 An employee whose attendance at a training activity is mandatory shall receive overtime pay or compensatory time, in accordance with the provisions of the County Personnel Regulations, for time spent in training outside the employee's regular work hours.
- 2.4 Where attendance at a training activity is optional, an employee who participates in such training outside his or her regular work hours normally shall not be entitled to either additional salary or compensatory time.
- 2.5 In exceptional cases, a department head may authorize overtime pay or compensatory time for employees attending optional training on their personal time, if in the judgment of the department head, a substantial degree of benefit to the department is expected from such training.
- 2.6 Participation in employee development programs shall be equally open without discrimination to all persons who meet prerequisites.
- 2.7 Training shall be utilized to promote the County's equal employment opportunity and affirmative action programs.



# ADMINISTRATIVE PROCEDURE

MONTGOMERY COUNTY, MARYLAND

NO.

4 - 6

PAGE OF

2 3

DATE

10/17/73

CAO APPROVAL

/s/ WHH

TITLE

EMPLOYEE DEVELOPMENT

## RESPONSIBILITIES

- 3.0 Employee development is a shared responsibility in the County service. Most development is self-development. The role of training programs is to assist the individual employee by providing appropriate learning experience.
- 3.1 The providing of such learning experiences is primarily the responsibility of each department, agency or office. Supervisors and management personnel shall take steps to ensure that subordinates receive the training which they may need.
- 3.2 The Employee Development Division of the Personnel Office is charged with providing leadership in the field of employee development for the County government. The Division shall provide specialist services to supervisors and management personnel to assist them both in meeting their training responsibilities and in introducing change and improving interpersonal relations.
- 3.3 It shall be the responsibility of department heads, division heads and supervisors:
- A. To determine the training needs of departmental personnel at all levels in the preparation of a departmental training plan.
  - B. To utilize, where practicable, the consulting services of the Employee Development Division of the Personnel Office in planning, conducting and evaluating departmental training activities, in introducing operational changes and in improving interpersonal relations.
  - C. To provide release time for employees to participate in needed training activities as permitted by unit workloads.
  - D. To authorize personnel to plan and conduct training and to provide facilities and materials within the limitations of available resources.
  - E. To budget for single department training activities and for attendance at conferences, workshops, college courses, etc., by employees on professional improvement leave based upon the department training plan.





# ADMINISTRATIVE PROCEDURE

MONTGOMERY COUNTY, MARYLAND

TITLE

EMPLOYEE DEVELOPMENT

NO

4 - 6

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3 3

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CAO APPROVAL

/s/ WHH

- 3.4 The Employee Development Division of the Personnel Office shall have responsibility:
- A. To provide specialist services upon request to management officials, department heads, division heads and supervisors in assisting in the design, conduct and evaluation of training activities.
  - B. To serve, when requested, as a consultant in the introduction of operational change, in the improvement of interpersonal and inter-group relations and in the utilization of action research and organization development efforts.
  - C. To coordinate or conduct interdepartmental training programs.
  - D. To maintain a pool of audio-visual equipment for the use of those operating departments whose need for a piece of equipment is too infrequent to warrant acquisition for their sole use.
  - E. To budget for interdepartmental training programs, tuition assistance and the Employee Development Division's consulting responsibilities.

## DEPARTMENTS AND AGENCIES AFFECTED

4.0 All

## PROCEDURE

- 5.0 Department or Agency Head
- Appoint a Training Advisory Committee or Coordinator to identify training needs and to encourage and coordinate training for the department or agency.
- Submit a report by September 1st of each year to the Employee Development Division of the Personnel Office which outlines departmental training programs which took place in the preceding fiscal year.
- 5.1 Employee Development
- Prepare an annual report by November 15th of each year which sets forth training accomplishments of the individual County departments/agencies and those of the Employee Development Division.



# Administrative Procedure

TITLE

EMPLOYEE TUITION ASSISTANCE PROGRAM (ETAP)

NO.	PAGE	OF	ISSUE DATE	EFFECTIVE DATE	CAO APPROVAL
4-18	1	5		5/1/80	<i>125</i>

## PURPOSE

- 1.0 To set forth the policies and procedures of the Employee Tuition Assistance Program (ETAP).

## POLICIES

- 2.0 The ETAP program exists to assist County employees with educational expenses in order to: 1) help them perform more effectively in their current job classifications, and 2) assist them to prepare for higher level responsibilities in the County Government.
- 2.1 The County Government will pay 100% of the authorized educational expenses for an employee approved to participate in ETAP, up to a maximum amount established each fiscal year for full-time employees and up to half that maximum amount for part-time employees, contingent on the availability of funds. Tuition and compulsory fees such as matriculation, registration, laboratory, library, and graduation fees are authorized educational expenses. The cost of books, application, parking, and late fees are not covered by the program.
- 2.2 The following categories of employees are eligible to participate in ETAP:
- All year-round merit, non-merit, and career conditional employees of the Montgomery County Government who serve in departments, offices, or agencies under the direction of the County Executive, Chief Administrative Officer or the County Council are eligible to participate in the ETAP program with the exception of County law enforcement officers in the Police Department, Corrections and Rehabilitation Department, and Sheriff's Office who are eligible to participate in the County's Police Professional Advancement Program (PPAP) or employees of the Fire/Rescue Services Department who are eligible to participate in the Fire Science Program.
  - Employees of the State's Attorney's Office with the exception of the State's Attorney. These employees are eligible to participate in ETAP as a result of State legislation (House Bill 1439) passed in 1974.
  - Employees of the Montgomery County Credit Union who held merit status prior to the Credit Union becoming an independent agency in 1976.
- 2.3 Employees who do not have permanent employment status with the County Government may apply for ETAP benefits. If approved they will be required to provide the necessary funds initially. Upon successful completion of the course and achievement of permanent status, they may receive reimbursement by submitting the following to the ETAP Coordinator:
- Evidence of satisfactory course completion.

# Administrative Procedure

TITLE

EMPLOYEE TUITION ASSISTANCE PROGRAM (ETAP)

NO.	PAGE	OF	ISSUE DATE	EFFECTIVE DATE	CAO APPROVAL
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- b. Receipts and/or cancelled checks showing payment of approved costs.
- c. Evidence, such as a copy of the Employee Certification Form or a memorandum from the applicant's supervisor which indicates achievement of permanent status.

2.4 Career conditional employees with six-months satisfactory performance with the County Government will be considered to have attained permanent status upon the receipt of a memorandum from the employee's supervisor indicating this fact. Career conditional employees who do not have six-months satisfactory performance with the County Government will follow the procedure for employees without permanent status as stated in paragraph 2.

2.5 The following are acceptable educational objectives under ETAP:

- a. A certificate, associate of arts degree, baccalaureate degree, or graduate degree in a field directly related to an employee's work, normal career progression, or which will prepare an employee for a career change within the County Government.
- b. Completion of an individual credit or non-credit course offered by an acceptable educational institution, where the course is directly related to an employee's work, normal career progression, or which will prepare an employee for a career change within the County Government.

2.6 Applicants who participate in the ETAP program in order to prepare for a career change are required to participate in the ETAP Career Counseling Program. The ODT Division will inform applicants for whom this is a requirement and of the procedures to follow.

2.7 The following educational objectives or courses are not approvable under the ETAP program:

- a. A Bar review course.
- b. A CPA preparation course.
- c. Credit course taken on an audit basis.

2.8 An educational institution acceptable under ETAP may include a public or private vocational or business school, a college or university, or a professional, scientific or technical institution.

2.9 Employees receiving V.A. or other governmental educational benefits for a given course of study are ineligible to receive duplicate benefits for the same course under ETAP.

# Administrative Procedure

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EMPLOYEE TUITION ASSISTANCE PROGRAM (ETAP)

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- 2.10 Courses are to be taken during off-duty hours to assure that service to the public is not disrupted. ETAP may not be used to fund courses taken when an employee is on Professional Improvement Leave.
- 2.11 Participation in the ETAP program obligates an employee to remain employed with the County Government for one year after completing any course funded in whole or in part by ETAP funds or to pay back to the County Government a pro-rata portion of the ETAP funds received.
- 2.12 Employees who leave the County's employ prior to completing an ETAP funded course are obligated to reimburse the County Government for all monies the County expended related to that course in addition to all other ETAP monetary obligations.
- 2.13 The one-year mandatory service will be calculated using the first day of the month in which an ETAP funded course ends. The pro-rata amount refundable to the County will be calculated on a quarterly basis.
- 2.14 ETAP applications should be received by the Organization Development & Training Division prior to registration but will not be processed earlier than 30 days before such registration. Applications for courses taken in a previous fiscal year cannot be accepted.

## PROCEDURE

- 3.0 ETAP Applicant  
After deciding on coursework, institution, etc. fills out three (3) copies of the ETAP application.
- 3.1 ETAP Applicant's Immediate Supervisor  
Fills out "Immediate Supervisor" section on reverse side of application and recommends approval or disapproval of application. A recommendation of disapproval shall be based only on substandard work performance or misconduct by the applicant. The basis for disapproval must be indicated on the ETAP form.
- 3.2 Division Chief or Department Training Coordinator  
Checks appropriate box indicating concurrence or non-concurrence with immediate supervisor's recommendation. Forwards all three copies of application to Organization Development & Training Division.
- 3.3 Organization Development & Training Division  
Reviews application to ensure that all required information and signatures are supplied and that coursework is consistent with objectives of the program. If applicant has used ETAP funds

# Administrative Procedure

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EMPLOYEE TUITION ASSISTANCE PROGRAM (ETAP)

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before, his/her file will be reviewed to ensure that grades from previous ETAP funded courses are on file. Grades from previous ETAP funded courses must be on file before action can be taken on subsequent applications. Since Fall semester grades are not normally published prior to registration for the Spring semester, Fall semester grades need not be on file in order for the subsequent Spring semester's application to be acted on. However, Fall grades must be submitted to ODT Division as soon as they are received by the ETAP participant.

3.4 Approves or disapproves ETAP application.

3.5 If approved, applicant is sent copy of application, School Authorization Letter, and "Actual ETAP Funds Used" memorandum. Department Training Coordinator is sent a copy of approved application and third copy of application is placed in participant's ETAP file.

3.6 If disapproved, applicant will be informed of basis for disapproval and copies of the application will be distributed as in 3.5 above.

3.7 Applicant Registers for course(s), using the School Authorization Letter to pay for the amount of tuition and required fees covered by ETAP.

3.8 Fills out "Actual ETAP Funds Used" memorandum and sends it to ODT Division.

## EMPLOYEE OBLIGATIONS AND RESPONSIBILITIES

4.0 Employees are personally and financially responsible for any educational commitments made without prior approval of the Personnel Office.

4.1 In order to continue to participate in ETAP, employees who fail or withdraw from courses must first reimburse the County Government for all monies that the County has expended related to those courses. Employees who find they cannot continue in courses should follow their schools's prescribed course withdrawal procedure and then immediately notify the ODT Division on their action.

## PROGRAM CONTINUATION

5.0 The Employee Tuition Assistance Program is a regular part of Montgomery County's

# Administrative Procedure

TITLE

EMPLOYEE TUITION ASSISTANCE PROGRAM (ETAP)

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Organization Development & Training Program. However, the County Government reserves the right to discontinue or modify the program at any time for budgetary reasons or other compelling considerations.

## FORMS USED

ETAP Application  
School Authorization Letter  
"Actual ETAP Funds Used" Memorandum

MONTGOMERY COUNTY CODE  
The Charter

**Sec. 407. Prohibition Against Additional Compensation.**

No member of the Council and no officer or employee of the County whose salary is fixed, in whole or in part, by this Charter, the laws of the County, or its personnel regulations, shall be entitled, directly or indirectly, to any other salary, expenses, or compensation from the County for performance of public duties except expenses for travel and subsistence incident to the performance of official duties as prescribed by law. (Election of 11-2-82.)



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan  
County Executive

Charles W. Thompson, Jr.  
County Attorney

May 10, 1999

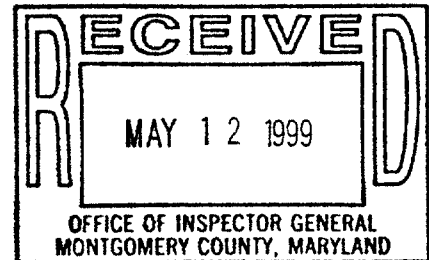
To: Norman D. Butts  
Inspector General

Via: Charles W. Thompson  
County Attorney

Via: Marc P. Hansen, Chief  
Division of General Counsel

From: Anne T. Windle  
Assistant County Attorney

Subj: Charter Section 407 and Tuition Reimbursement



Question Presented

Do departmental college tuition reimbursements to employees violate Section 407 of the County Charter, *Prohibition Against Additional Compensation*?

Answer

College tuition reimbursements to employees do not violate Section 407 of the County Charter, if the reimbursements are authorized. Section 401, *Merit System*, provides that the merit system shall provide the means to recruit, select, develop, and maintain an effective, non-partisan and responsive work force. Section 33-5(a) of the County Code states that one purpose of the merit system is to foster excellence in public service and high individual competence. Section 33-5(b)(4) specifically encourages employee training to assure high quality performance and, where possible, an opportunity to facilitate employee career development. Administrative Procedure 4-6, *Employee Development*, specifically acknowledges college courses as one type of training departments should budget for. Therefore, the authority to reimburse an employee for college tuition flows from Section 401 of the Charter, Code Section 33-5 and the appropriation of funds for employee training.

Department heads have authority to approve the expenditure of departmental operating funds for employee training. The department head is responsible for ensuring that these funds



are spent in a manner consistent with advancing the interests of the County, which may include under §33-5(b)(4), facilitating the career development of department employees.

For example, we think there is no doubt that a department head is legally authorized to provide employee training in the use of an operating software system that is used by the department – even though this training may enhance the employee's position in the job market. The analysis becomes more difficult as the training becomes more orientated to career enhancement and less directed to the immediate needs of the employee's County job. For example, reimbursing an employee for taking a college course in literature in order to meet the requirements for a college degree could be problematic. But even in this case, a department head may determine that such an expenditure is necessary to retain an effective work force. In that situation, we believe that the expenditure would be legal.

The Scholar Attorney Program in the Office of the County Attorney is an example of using County funds to provide training that is intended primarily to enhance the career goals of the employee. Under the Scholar Attorney Program, newly admitted attorneys are appointed as assistant county attorneys to a 12-18 month term. The County pays these attorneys an extremely modest annual salary of \$30,000 (without benefits) and an opportunity to obtain up to \$3,000 in training. Offering these attorneys the opportunity to obtain considerable experience coupled with formal training opportunities provides the incentive the County needs to recruit and retain these employees.

#### Analysis

Section 407 is part of Article 4 of the County Charter, *Merit System and Conflicts of Interest*, and provides:

No member of the Council and no officer or employee of the County whose salary is fixed, in whole or in part, by this Charter, the laws of the County, or its personnel regulations, shall be entitled, directly or indirectly, to any other salary, expenses, or compensation from the County for performance of public duties except expenses for travel and subsistence incident to the performance of official duties as prescribed by law.

Section 407 has remained substantively unchanged since the County Charter was originally adopted in 1948. But to understand the scope<sup>1</sup> of Charter Section 407 requires reading Section

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<sup>1</sup> For purposes of this opinion, we assume without deciding that an employee whose wage is set under the Uniform Salary Plan is an employee whose salary is fixed under law or the  
(continued...)

407 in the context of other provisions of the Charter.<sup>2</sup>

Article 4 of the Charter requires that employees — with some exceptions not relevant here — must be members of the merit system. The Commentary of the 1968 Charter Revision Commission (1968 Commentary) notes that Article 4 is designed to maintain the merit system and to strengthen the merit principle and its administration.

By merit system the Charter Revision Commission had in mind the recommendations of the Municipal Manpower Commission, which are contained in *Governmental Manpower for Tomorrow's Cities*, a report of the Municipal Manpower Commission, 1962 (Report). The Report pertains to administrative, professional, and technical (APT) employees staffing local governments. The Report was based on the first national study to examine the problem of revitalizing local government through better use of APT employees. One recommendation states, "Personnel practices must be revitalized to provide rewarding careers." (Page 111.) Related to this recommendation, the Report continues, "Local governments must develop APT personnel for broader professional and executive duties." (Page 113.) The Report identifies a need to update the knowledge and develop the capabilities of APT employees, and recommends that the chief executive and department heads ensure that APT personnel are aided to expand their understanding and technical skills through appropriate training. According to the Report, essential to further training are university programs, institutes sponsored by professional associations, and in-service institutes. Six steps required by local governments are identified:

1. Action by the chief executive to provide training which will help each of his colleagues develop the skills and understanding they need.
2. Employment in the larger local governments, at least, of competent training officers to work directly with the chief executive.
3. A policy of "continuing development" of employees, based on research into the needs of both the individual and the enterprise.

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<sup>1</sup>(...continued)  
Personnel Regulations.

<sup>2</sup> Sinai Hosp. Of Baltimore v. Dept. of Employment and Training, 309 Md. 28, 522 A.2d 382 (1987) (All parts of a law should be read together giving effect to all those parts so as to give effect to the purpose of the law.)

4. More comprehensive training to include preparation for higher positions and to aide specialists (e.g., social workers or engineers) to think and act like managers.
5. Use of the full range of training techniques and devices, as well as the best instructional methods and materials.
6. Provision of positive incentives to employees who do train, especially in using training as a criterion for promotion. (Page 114.)

The Report urges a local government to provide opportunities for personal growth for every APT employee and that training must be recognized as a public responsibility for the public's benefit. (Page 115.)

It is clear that the 1968 Commentary intended the creation of a modern personnel system in Montgomery County. These changes included a heavy emphasis on training and employee development.

Implementing these provisions, the Chief Administrative Officer (CAO) adopted in 1973 Administrative Procedure 4-6, *Employee Development* (AP 4-6). AP 4-6 specifically states that it is the responsibility of department heads, division heads and supervisors to budget for single department training activities and for attendance at conferences, workshops, and college courses by employees on professional improvement leave based upon the department training plan.

In 1978 the voters approved an amendment to Section 404, *Duties of the Personnel Board*, to clarify the policy role of the County Council by providing that regulations adopted by the Personnel Board must not be in conflict with "general personnel policies established by local law." Subsequently, in 1979, the County Council enacted a comprehensive merit system law, as authorized by the 1978 Charter amendment, to delineate the personnel management responsibilities of the CAO and the Personnel Board.

A new article II, *Merit System*, was added to Chapter 33 the Montgomery County Code. Section 33-5(a) as enacted provides:

It is the legislative intent of the county council that this article foster excellence in the public service; high individual competence among employees; recognition that respect for the employee as an individual is first required for achieving such excellence and

competence; and harmonious and efficient operation within the various components of county government. (Emphasis added.)

Section 33-5(b)(4) as enacted provides:

The merit system established by this chapter encompasses the following principles: merit system employees shall be provided training as needed to assure high quality performance and such training where possible should also provide increased opportunity to facilitate their career advancement. (Emphasis added.)

Both Section 33-5(a) and 33-5(b)(4) remain unchanged in the current Code. The 1968 Commentary had recommended "an ordinance or code which supports merit principles and places full responsibility for carrying out these principles in the chief executive." Section 33-5(a) fulfills this recommendation. Section 33-5(b)(4) specifically supports the concept of employee training, including training that would increase opportunity to facilitate career development, which is consistent with the Municipal Manpower Commission's 1962 report, relied on by the 1968 Commission.

On November 4, 1980, Sections 401-404 of the Charter, pertaining to the merit system, were amended to reallocate and clarify personnel functions among the Council, the County Executive, the Chief Administrative Officer, and the Personnel Board (renamed the Merit System Protection Board). One of the amendments expressly provided that the merit system is intended to provide the means to develop and maintain an effective workforce.

Thus, the Charter, Sections 33-5(a) and (b)(4) of the Montgomery County Code, and AP 4-6, read in conjunction with the 1968 Commentary, and the 1962 Report of the Municipal Manpower Commission, make it clear that the merit system is intended to support the development of employees through training and educational opportunities to not only enhance job performance but also employee career advancement.

Finally, when the Council approves the annual operating budget it appropriates funds for departments to use for employee training and education.<sup>3</sup> Although the Council appropriates a

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<sup>3</sup> Dorsey v. Petrott defines "appropriation" as follows:

... [A]n appropriation of public funds is made by a constitutional mandate or a lawful legislative act whose primary object is to authorize the withdrawal from the State Treasury of a certain sum of money for a specified public object or purpose to which such

(continued...)

single sum for operating expenses for each department, this appropriation, in our view, includes authority for a department to expend funds for training and education. After the County Executive submits an operating budget to the Council, the budget detail is made available to Council. This detail shows the various elements making up the operating budget for a department including training, equipment maintenance, supplies, publications, postage, etc.<sup>4</sup>

Therefore, when the County Council adopts the budget, which includes dollars specified for training and education, that act authorizes the withdrawal of funds for employee training, including training designed to enhance employee career advancement.

### Conclusion

We believe Section 407 does not negate Section 401 and the merit system law that has flowed from it. Section 407 is intended to prevent unauthorized payment to employees. But training and education expenditures are authorized payments since they are authorized by Charter Section 401 and Code Section 33-5 in conjunction with funds appropriated in the yearly budget for that purpose. We conclude that expenditure of funds for training and education, including college tuition, is therefore legal.

Although reimbursement of college tuition may be legal, we acknowledge that such expenditures may be open to potential abuse. Accordingly, administrative contracts appropriate to the department, the classification of the employee, and the interests of the County should be established and implemented. Administrative Procedure 4-18, *Employee Tuition Assistance Program*, provides some useful guidance in this regard.

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<sup>3</sup>(...continued)

sum is to be applied. 178 Md. 230, 245, 13 A.2d 630, 638 (1940).

<sup>4</sup> Training and education is found under sub-object code 3549.

Norman D. Butts

May 10, 1999

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cc: Douglas Duncan, County Executive  
Isaiah Leggett, Council President  
Bruce Romer, Chief Administrative Officer  
Marta Brito Perez, Director, Office of Human Resources  
Robert Merryman, Acting Director, Department of Public Works and Transportation  
Timothy Firestine, Director, Department of Finance

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